

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TIMOTHY CARTER A/K/A RUSSELL HARRIS,

Plaintiff,

**08-CV-4485 (WHP)**

-against-

THE CITY OF NEW YORK, CORRECTION OFFICER  
“JOHN” CANTON, SHIELD NUMBER UNKNOWN,  
AND SEVERAL UNIDENTIFIED CORRECTION  
OFFICERS,

**COMPLAINT  
AND JURY DEMAND**

**ECF CASE**

Defendants.  
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Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS by his attorneys, TRACIE A. SUNDACK & ASSOCIATES, L.L.C., complaining of Defendants THE CITY OF NEW YORK, CORRECTION OFFICER “JOHN” CANTON, SHIELD NUMBER UNKNOWN, and SEVERAL UNIDENTIFIED CORRECTION OFFICERS, respectfully alleges, as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action for compensatory damages, punitive damages and attorney’s fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of his civil rights, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States.

**JURISDICTION**

2. This action arises under the provisions of the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under federal law, particularly the Civil Rights Act, 42 U.S.C. Sections 1981, 1983 and 1985 (2) and (3).

3. This Court has jurisdiction of this cause under 28 U.S.C., by virtue of Section 1343. Declaratory and injunctive relief is authorized pursuant to 28 U.S.C. Sections 2201 and 2202 and F.R.C.P. 37.

**VENUE**

4. Venue is properly laid in the Southern District of New York under U.S.C. § 1391(b), in

that this is the District in which the claim arose.

**JURY DEMAND**

5. Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

**PARTIES**

6. Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS is a Black male, a citizen of the United States, and at all relevant times a resident of the City and State of New York.

7. Defendant THE CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the General Municipal Law of the State of New York.

8. Defendant THE CITY OF NEW YORK maintains the New York City Department of Correction, including all the correction officers thereof, a duly authorized corrections/penal department, authorized to perform all functions of a corrections/penal department as per the applicable sections of the New York State Penal Law, acting under the direction, control and supervision of the aforementioned municipal corporation, THE CITY OF NEW YORK.

9. That at all times hereinafter mentioned, Defendant CORRECTION OFFICER "JOHN" CANTON, SHIELD NUMBER UNKNOWN, was employed by Defendant THE CITY OF NEW YORK as a correction officer.

10. That at all times hereinafter mentioned Defendant CORRECTION OFFICER "JOHN" CANTON, SHIELD NUMBER UNKNOWN, was assigned to the Anna M. Kross Center located at 18-18 Hazen Street, East Elmhurst, New York 11370.

11. That at all times hereinafter mentioned, Defendant CORRECTION OFFICER "JOHN" CANTON, SHIELD NUMBER UNKNOWN, acted within the scope of his employment for Defendant THE CITY OF NEW YORK.

12. That at all times hereinafter mentioned, Defendant CORRECTION OFFICER "JOHN" CANTON, SHIELD NUMBER UNKNOWN was acting under the color and pretense of the statutes, ordinances, regulations, customs, and usages of the City and State of New York,

and under the authority of his office as a correction officer for said city and state.

13. That at all times hereinafter mentioned, Defendants SEVERAL UNIDENTIFIED CORRECTION OFFICERS were employed by Defendant THE CITY OF NEW YORK as correction officers.

14. That at all times hereinafter mentioned Defendants SEVERAL UNIDENTIFIED CORRECTION OFFICERS were assigned to the Anna M. Kross Center located at 18-18 Hazen Street, Bronx, New York 11370.

15. That at all times hereinafter mentioned, Defendants SEVERAL UNIDENTIFIED CORRECTION OFFICERS, acted within the scope of their employment for Defendant THE CITY OF NEW YORK.

16. That at all times hereinafter mentioned, Defendants SEVERAL UNIDENTIFIED CORRECTION OFFICERS, were acting under the color and pretense of the statutes, ordinances, regulations, customs, and usages of the City and State of New York, and under the authority of their office as correction officers for said county, city and state.

### **FACTS**

17. That on or about January 31, 2007, Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS was an inmate in the control and custody of the New York City Department of Correction, incarcerated under Book and Case Number [REDACTED] and confined to the Anna M. Kross Center located at 18-18 Hazen Street, East Elmhurst, New York.

18. That on or about January 31, 2007, at approximately 10:00 a.m., Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS was in the gymnasium of the Anna M. Kross Center when he was accosted by members of the New York City Department of Correction including, but not limited to, Defendants CORRECTION OFFICER "JOHN" CANTON, SHIELD NUMBER UNKNOWN, and SEVERAL UNIDENTIFIED CORRECTION OFFICERS.

19. That, at the aforementioned time and place, Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS was handcuffed, and physically assaulted by Defendants CORRECTION OFFICER "JOHN" CANTON, SHIELD NUMBER UNKNOWN, and SEVERAL

UNIDENTIFIED CORRECTION OFFICERS.

20. That, as a result of this unprovoked assault, Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS sustained injuries to, *inter alia*, his head, ears, ribs, neck, and torso.

21. As a result of the foregoing, Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS sustained physical injuries, emotional distress, embarrassment, humiliation, and deprivation of his constitutional rights.

**AS AND FOR A FIRST CAUSE OF ACTION FOR  
EXCESSIVE FORCE UNDER 42 U.S.C. § 1983**

22. Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS repeats, reiterates and realleges each and every paragraph of this complaint and further alleges:

23. The level of force employed by Defendants CORRECTION OFFICER “JOHN” CANTON, SHIELD NUMBER UNKNOWN, and SEVERAL UNIDENTIFIED CORRECTION OFFICERS was objectively unreasonable, unnecessary, unjustified and was delivered maliciously and sadistically to punish Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS, all in violation of Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS’s constitutional rights.

24. As a result of the aforementioned conduct of Defendants CORRECTION OFFICER “JOHN” CANTON, SHIELD NUMBER UNKNOWN, and SEVERAL UNIDENTIFIED CORRECTION OFFICERS, Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS was subjected to excessive force and sustained physical injuries.

**AS AND FOR A SECOND CAUSE OF ACTION FOR FAILURE TO INTERVENE**

25. Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS repeats, reiterates and realleges each and every allegation contained in this complaint.

26. Each and every individual Defendant had an affirmative duty to intervene on Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS’s behalf to prevent the violation of his constitutional rights and failed to so intervene despite having had a realistic opportunity to do so.

27. As a result of the aforementioned conduct of the individual Defendants, Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS’s constitutional rights were violated and he was

subjected to excessive force, cruel and unusual punishment and sustained physical injuries.

**AS AND FOR A THIRD CAUSE OF ACTION FOR MUNICIPAL LIABILITY**

28. Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

29. Defendants CORRECTION OFFICER “JOHN” CANTON, SHIELD NUMBER UNKNOWN, and SEVERAL UNIDENTIFIED CORRECTION OFFICERS, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

30. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Department of Correction included, but were not limited to: a) using force in an unreasonable, unnecessary, and unjustified manner; and b) using force with the purpose and intent of maliciously and sadistically punishing individuals in their custody.

31. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Department of Correction constituted deliberate indifference to the safety, well-being and constitutional rights of Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS.

32. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Department of Correction were the direct and proximate cause of the constitutional violations suffered by Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS as alleged herein.

33. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Department of Correction were the moving force behind the constitutional violations suffered by Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS as alleged herein.

34. Defendants CORRECTION OFFICER “JOHN” CANTON, SHIELD NUMBER

UNKNOWN, and SEVERAL UNIDENTIFIED CORRECTION OFFICERS, collectively and individually, while acting under the color of state law, were directly and actively involved in violating Plaintiff TIMOTHY CARTER A/K/A RUSSELL HARRIS's constitutional rights.

35. All of the foregoing acts by defendants deprived Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS of federally protected rights including, but not limited to, the right:

- A. Not to have excessive force imposed upon him;
- B. Not to have cruel and unusual punishment imposed upon him;
- C. To receive equal protection under the law.

36. As a result of the foregoing, Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS is entitled to compensatory damages in the sum of Five Hundred Thousand Dollars (\$500,000.00) and is further entitled to punitive damages against the individual defendants in the sum of One Million Dollars (\$1,000,000.00)

**WHEREFORE** Plaintiff TIMOTHY CARTER a/k/a RUSSELL HARRIS demands judgment against Defendants THE CITY OF NEW YORK, CORRECTION OFFICER "JOHN" CANTON, SHIELD NUMBER UNKNOWN, and SEVERAL UNKNOWN CORRECTION OFFICERS, jointly and severally, in the amount of One Million Dollars (\$1,000,000.00) in compensatory damages and Two Million Dollars (\$2,000,000.00) in punitive damages, plus reasonable attorney's fees, costs and disbursements of this action.

Dated: White Plains, New York  
May 1, 2008

S/  
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TRACIE A. SUNDACK & ASSOCIATES, L.L.C.  
By: Tracie A. Sundack (TS-7778)  
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